

- 8(b)(2) cases where individuals have been denied work opportunities because of the union's alleged discrimination, including hiring hall refusal to refer allegations
- National cases or cases of unusually high visibility.

11740.2 Category II Cases: Significant Impact

Category II (Significant) cases are all other cases, except for those included in Categories III and I. They typically involve conduct which affects core rights under the Act and for which there is no alternative remedy. In addition, this category includes those cases involving 8(d) duties where the conduct does not imperil the bargaining relationship itself.

Illustrations include:

- 8(a)(1), (3), and (4) discrimination cases which do not involve a permanent or indefinite loss of employment
- Refusal to hire cases
- Nonsection 10(j) picket line violence or misconduct cases
- All Representation cases which do not involve the resolution of a question concerning representation, i.e., UC, UD, AC, and WH cases
- 8(a)(5)/8(b)(3) refusal to provide information cases
- 8(a)(5) unilateral change allegations
- 8(b)(1)(A) duty of fair representation cases
- Independent 8(a)(1) allegations

11740.3 Category I Cases: Important Impact

Category I (Important) cases make up the remainder of the Agency's work. They either are deferrable or involve conduct for which alternative means of redress are available to the charging party.

Illustrations include:

- *Collyer/Dubo* and other deferral cases
- 8(a)(5) pension and welfare contribution collection cases. See Memo GC 02-05

11740.4 Priority of Cases Within Each Category

In determining which of several cases should be given priority within the particular Impact Analysis category, consideration should be given to the particular facts of each case, the nature of the alleged violation, its impact on the parties or the public, the type of relief indicated, and any other factors that would affect the policies of the Act. Generally, cases in which injunctive relief is being considered will take precedence over other matters, even in the same category.

11750–11754 SUBMISSIONS TO DIVISIONS OF ADVICE AND OPERATIONS-MANAGEMENT, THE SPECIAL LITIGATION BRANCH AND THE OFFICE OF THE EXECUTIVE SECRETARY

This section sets forth the general procedures regarding the submission of unfair labor practice case issues to the Divisions of Advice or Operations-Management, or the Special Litigation Branch for advice, clearance, or authorization. It also addresses the issues in representation cases which are to be submitted to the Board through the Office of the Executive Secretary. There are also other sections of the Manual regarding specific matters, including Section 10(j), 10(k), and compliance issues, in which advice, clearance or authorization should or must be sought.

11750 Unfair Labor Practice Cases**11750.1 Submissions to Division of Advice**

Although the Regional Director generally has the responsibility to determine whether an issue warrants submission to the Division of Advice, the General Counsel's guidelines as set forth in GC Memo 02-03 establish that the following types of issues should be submitted:

- Developing areas of the law
- New technology, methods of business organization or union organizing activity
- Special prominence or matters of more than local interest
- Interregional impact
- Matters traditionally requiring Advice clearance.

In addition, certain other matters, as set forth in Secs. 11753.1(a) and 11753.2(a), should also be submitted to the Division of Advice. Credibility issues should not normally be submitted, but rather should be resolved by the Regional Director.

The Regional Office should notify the parties that the case is being submitted to the Division of Advice and the specific issue(s) involved. If the parties have not

submitted a position on the advice issues, they should be invited to do so promptly. However, the Regional Office must not communicate its recommendation to the parties.

With regard to cases interregional in scope, the Regional Office should consult with the Division of Operations-Management prior to submitting the case to the Division of Advice.

In all cases pending in the Division of Advice, any subsequent developments (such as withdrawals, settlements and private adjustments) should be promptly reported by the Regional Office.

If any skip counsel issues arose during an investigation, the Regional Office's submission to the Division of Advice should note the information listed in Sec. 10058.

11750.2 Format and Content of Request for Advice

All issues submitted should be clearly posed in a memorandum captioned: Request for Advice. Although the Request for Advice should be transmitted to the Divisions of Advice and Operations-Management electronically, the entire file should be forwarded to the Division of Advice promptly thereafter. The Request for Advice should be arranged in the following order:

- Charge
- Issues: The Regional Office should clearly note the specific issues on which advice is sought.
- Facts: The Regional Office should set forth a concise statement of relevant facts including credibility resolutions. If a Regional Agenda Minute is sufficiently detailed, it can be submitted as an attachment to the Advice memo rather than repeating the facts in the Request for Advice.
- Regional Office's Position: The Regional Office should set forth its position on each issue, noting any dissents.
- Analysis: The Regional Office should set forth its analysis of the strengths and weaknesses of the arguments on either side.
- Related Cases.

11750.3 Requests by Division of Advice for Further Investigation

All cases in which the Division of Advice requests further investigation should receive priority treatment consistent with their categorization under Impact Analysis. The information requested should be transmitted by the most expeditious means. Advice should be notified of any undue delay and the reasons therefor, with an estimate of the additional time required.

11751 Suits Against the Agency and Requests for Intervention

The Regional Office should promptly inform the Special Litigation Branch whenever the Agency or its agent has been sued or upon a request that the Agency intervene in private litigation. Pleadings and papers, as received, should be forwarded as expeditiously as appropriate to the Special Litigation Branch with a copy to the Division of Operations-Management.

11752 Precomplaint Submissions to Division of Operations-Management

- Clearance must be sought before naming an attorney in a complaint as a party respondent and/or agent of the respondent in the commission of unfair labor practices
- In cases in which the alleged unfair labor practices also arguably violate the Occupational Safety and Health Act, the Regional Office should refer to GC Memo 75-29 and GC Memo 79-4 for instructions regarding submission to the Division of Operations-Management
- In cases in which the alleged unfair labor practices also arguably violate the Federal Mine Safety and Health Act of 1977, the Regional Office should refer to GC Memo 80-10 for instructions regarding submission to the Division of Operations-Management
- In cases in which the alleged unfair labor practice charge also involves the Americans with Disabilities Act (ADA), the Regional Office should consult with the Division of Operations-Management
- Misconduct by attorneys or other representatives should, where appropriate, be referred to the Division of Operations-Management. Sec. 102.177(e), Rules and Regulations and OM 97-2 and OM 01-80

11753 Postcomplaint, Posthearing, and Compliance Submissions**11753.1 Postcomplaint Submissions***(a) Division of Advice*

Authorization from the Division of Advice should be obtained before:

- Issuing postcomplaint investigative subpoenas in certain situations. See Sec. 11770.4 for more detailed guidance.
- Issuing trial subpoenas if there are foreseeable impediments to enforceability, such as where the witness may assert a recognized privilege

